

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 10/6/2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT McFADDEN,

Plaintiff,

-against-

SUPERINTENDENT WILLIAM KEYSER;
DEPUTY SUPERINTENDENT OF SECURITY
GARY SIPPLE; CAPTAIN KENNETH LETUS;
SERGEANT LISA WILSON; SERGEANT
RONALD MILLER; FOOD SERVICES
ADMINISTRATOR ANTHONY RIZZUTO;
HEAD COOK JOHN PAPAVALIOU; COOK
ANTHONY CARMINATI; INMATE
GRIEVANCE PROGRAM SUPERVISOR
CORY PROSCIA; HEAD CHAPLIN
OGBONNA STAINISLAUS; NURSE
KATHLEEN BUTTLES; C.O. WILLIAM
ELBERTH; C.O. EDMUND PUERSCHNER;
C.O. MARK PUERSHNER; C.O. TIMOTHY
DOEINCK; C.O. OFFICER KINNE; C.O.
RYAN SOUTHARD; C.O. PAUL HOLLAND;
C.O. STEVE RYDER; C.O. GEORGE
GILMOUR, SR.; HEARING OFFICER
MORROW,

Defendants.

23-CV-802 (NSR)

SUPPLEMENTAL ORDER OF
SERVICE

NELSON S. ROMÁN, United States District Judge:

Plaintiff, who is currently incarcerated in the Mid-State Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act, regarding events that allegedly occurred at the Sullivan Correctional Facility, between 2019 and 2022. By order dated February 1, 2023, the Court granted Plaintiff's request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of fees.¹

¹ Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.¹ *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process

To allow Plaintiff to effect service on Defendants Superintendent William Keyser, Deputy Superintendent of Security Gary Sipple, Captain Kenneth Letus, Food Services Administrator Anthony Rizzuto, Nurse Kathleen Buttles, Correctional Officer (“C.O”) William Elberth, C.O. Edmund Puerschner, C.O. Mark Puerschner, and C.O. George Gilmour, Sr. through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each of these defendants.²³ The Clerk of Court is further instructed to issue summonses for each of these defendants and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon each of these defendants.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Clerk of Court is instructed to (1) issue summonses for Defendants Superintendent William Keyser, Deputy Superintendent of Security Gary Sipple, Captain Kenneth Letus, Food Services Administrator Anthony Rizzuto, Nurse Kathleen Buttles, C.O. William Elberth, C.O. Edmund Puerschner, C.O. Mark Puerschner, and C.O. George Gilmour, Sr., (2) complete the

. . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

² The New York State Attorney General (“NYAG”) observed that the U.S. Marshals Service’s previous attempt to serve Defendants at Sullivan Correction Facility was not accepted “due to miscommunication within the facility.” (ECF No. 42.) NYAG informs the Court that “this miscommunication has been remedied and that future service upon these individuals by Sullivan Correctional Facility will be accepted.” (*Id.*) NYAG also informs the Court that Defendant Keyser, though retired, can be served at the address listed in this Order. (*Id.*)

³ If the complaint is not served within 90 days after the date the summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service).

USM-285 forms with the addresses for each of these defendants, and (3) deliver all documents necessary to effect service on each of these defendants to the U.S. Marshals Service.

The Clerk of Court is kindly directed to mail a copy of this Order to *pro se* Plaintiff at Plaintiff's address listed on ECF and to show service on the docket.

SO ORDERED.

Dated: October 6, 2023
White Plains, New York

A handwritten signature in blue ink, appearing to read "Nelson S. Román", is positioned above a horizontal line.

NELSON S. ROMÁN
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Superintendent William Keyser
Department of Corrections and Community Supervision, C/O Office of Counsel
The Harriman State Campus, Building 4
1220 Washington Avenue, Albany, New York, 12226
2. Deputy Superintendent of Security Gary Sipple
Sullivan Correctional Facility
325 Riverside Drive
P.O Box 116
Fallsburg, N.Y. 12733-0116
3. Captain Kenneth Letus
Sullivan Correctional Facility
325 Riverside Drive
P.O Box 116
Fallsburg, N.Y. 12733-0116
4. Food Services Administrator Anthony Rizzuto
Sullivan Correctional Facility
325 Riverside Drive
P.O Box 116
Fallsburg, N.Y. 12733-0116
5. Nurse Kathleen Buttles
Sullivan Correctional Facility
325 Riverside Drive
P.O Box 116
Fallsburg, N.Y. 12733-0116
6. C.O. William Elberth
Sullivan Correctional Facility
325 Riverside Drive
P.O Box 116
Fallsburg, N.Y. 12733-0116
7. C.O. Edmund Puerschner
Sullivan Correctional Facility
325 Riverside Drive
P.O Box 116
Fallsburg, N.Y. 12733-0116
8. C.O. Mark Puerschner
Sullivan Correctional Facility
325 Riverside Drive

P.O Box 116
Fallsburg, N.Y. 12733-0116

9. C.O. George Gilmour, Sr.
Sullivan Correctional Facility
325 Riverside Drive
P.O Box 116
Fallsburg, N.Y. 12733-0116